

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDC 20-01 School Choice
SPONSOR(S): Education Committee
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee		D'Souza	Hassell

SUMMARY ANALYSIS

Florida provides a variety of school choice options, including the following five scholarship programs that allow parents of eligible students to register and attend private schools that may better serve a student's particular needs:

- The John M. McKay Scholarship Program;
- The Gardiner Scholarship Program (GSP);
- The Family Empowerment Scholarship Program (FES);
- The Florida Tax Credit Scholarship Program (FTC Program); and
- The Hope Scholarship Program (HSP).

The bill revises requirements for the GSP by:

- allowing a student with a disability who turns three years of age after September 1 to apply and be determined eligible for a scholarship if funds are available, instead of requiring the student to wait for the next program year to apply;
- requiring nonprofit scholarship-funding organizations (SFOs) to close inactive accounts after 2 fiscal years, instead of 3 fiscal years; and
- prohibiting eligibility to participate if the child is receiving another educational scholarship.

The bill revises the requirements for the FES by:

- providing priority eligibility for certain student populations;
- expanding eligibility;
- increasing the income threshold by 25 percentage points when more than 5 percent of total available scholarships have not been awarded;
- requiring parents to apply to the eligible nonprofit SFO, rather than the Department of Education, for a scholarship; and
- increasing the enrollment cap from 0.25 percent per year to 1.0 percent per year.

The bill revises requirements for the FTC Program by:

- revising the frequency of operational audits by the Auditor General from every year to at least once every 3 years; and
- providing that a student who receives a FTC scholarship remains eligible to participate until the student enrolls in a public school, graduates from high school, or reaches 21 years of age.

As part of the annual review of the HSP by an independent entity, the bill requires reviewing the school bullying prevention education program, climate, and code of student conduct of each public school from which ten or more students transferred to another public or private school using the HSP in a single academic year.

The bill has an indeterminate fiscal impact.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

For decades, Florida has been a national leader in providing high quality education options for thousands of parents and students. In addition to a myriad of public options, Florida offers four scholarship programs that allow parents of eligible students to register and attend private schools that may better serve a student's particular needs. Research shows students participating in another scholarship program were 15 percent more likely to enroll in a public college than their peers.¹ Private schools must meet specific criteria in order to be eligible to participate in these programs and the Department of Education (DOE) and Commissioner of Education (commissioner) are tasked with implementation and oversight responsibilities. In 2018, the Legislature strengthened the oversight and accountability measures for all scholarship programs in the state.² In addition, because a majority of private schools participate in more than one scholarship program, the Legislature consolidated all the common criteria relating to private school participation into a single statute.³

The Gardiner Scholarship Program

The Gardiner Scholarship Program (GSP) was created in 2014 and provides parents of eligible students with disabilities more flexibility to customize their child's education.⁴ Funds are distributed to qualified⁵ scholarship-funding organizations (SFOs) to establish accounts for eligible students.⁶ Parents can use funds from their account to choose from a variety of approved items for their student, including: contracted services, curriculum, instructional materials, tuition and specialized services such as applied behavior analysis, speech therapy, or occupational therapy.⁷

A student is eligible for the GSP if:

- the student is a resident of the state;
- the student is 3 or 4 years old on or before September 1 of the year in which the parent applies for a scholarship; and
- the student has a qualifying disability⁸ documented by an IEP or a diagnosis by a licensed physician or psychologist.⁹

In the 2018-2019 school year, a total of 11,917 students participated in the GSP. In the 2017-2018 school year, 60% of students used their scholarship for tuition and fees at an eligible private school. The average scholarship amount is \$10,418 per student.¹⁰

¹ Urban Institute, *The Effects of Statewide Private School Choice on College Enrollment and Graduation – Evidence from the Florida Tax Credit Scholarship Program*, September 2017, available at: https://www.urban.org/sites/default/files/publication/93471/the_effects_of_statewide_private_school_choice_on_college_enrollment_and_graduation_1.pdf.

² Ch. 2018-6, L.O.F.

³ Section 1002.421, F.S. In the 2018-19 school year, 1,569 of private schools participated in more than one scholarship program. There were a total of 2,067 participating private schools. Email, Florida Department of Education, Jared Ochs, Legislative Affairs Director (July 31, 2019).

⁴ Section 1002.385(1), F.S.

⁵ Section 1002.385(2)(e), F.S.

⁶ See s. 1002.385, F.S.

⁷ Section 1002.385(5), F.S.

⁸ Section 1002.385(2)(d), F.S. Qualifying disabilities include: Autism spectrum disorder, cerebral palsy, Down syndrome, intellectual disability, Phelan-McDermid syndrome, Prader-Willi syndrome, spina bifida, high-risk, muscular dystrophy, Williams syndrome, rare diseases, anaphylaxis, deaf, visually impaired, traumatic brain injured, hospital or homebound, or dual sensory impaired.

⁹ Section 1002.385(3)(a), F.S.

¹⁰ Florida Department of Education, Fact Sheet, Office of Independent Education & Parental Choice, *The Gardiner Scholarship Program*, October 2018, available at <http://www.fldoe.org/core/fileparse.php/5606/urlt/Gardiner.pdf>.

The Family Empowerment Scholarship Program

The Family Empowerment Scholarship Program (FES) was established in 2019 to provide children of Florida families that have limited financial resources with educational options to achieve success in their education.¹¹ The FES provides 18,000 students annually on a first-come, first-served basis education opportunities for academic and career success.¹² Beginning in the 2020-2021 school year, the number of students participating in the FES may annually increase by 0.25 percent of the state's total public school enrollment.¹³

A student is eligible for FES if the student meets the following criteria:

- The student's household income level does not exceed 300% of the federal poverty level (\$77,250 for a family of four) or the student is on the direct certification list (list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution on Indian Reservations program);¹⁴ or
- The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care;¹⁵ and
- The student is eligible to enroll in kindergarten or has spent the prior school year in attendance at a Florida public school. Prior attendance means the student was enrolled in, and in attendance at, a Florida public school during both the October and February student counts.¹⁶

Priority is given to students whose household income levels do not exceed 185 percent of the federal poverty level or who are in foster care or out-of-home care.¹⁷ Prior to scholarship funds being awarded, the student must be accepted and enrolled in a participating private school.¹⁸ A private school that is currently eligible to participate in any of the scholarship programs is eligible to participate in the FES.¹⁹

As of December 2019, 17,795 FES scholarships were awarded to students from 70 school districts for the 2019-2020 school year.²⁰

The Florida Tax Credit Scholarship Program

The Florida Tax Credit Scholarship Program (FTC Program) was created in 2001²¹ and allows taxpayers to make private, voluntary contributions to SFOs that can then be awarded as scholarships to eligible low-income students for private school tuition and fees. Taxpayers can receive a tax credit for use against their liability for corporate income tax, insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders or alcoholic beverage taxes on beer, wine, and spirits²². The tax credit is equal to 100 percent of the eligible contributions made.²³ To receive a tax credit the taxpayer must submit an application to the Department of Revenue and specify each tax for which the taxpayer requests a credit and the applicable taxable or state fiscal year

¹¹ Section 1002.394(1), F.S.

¹² Section 1002.394(11)(a), F.S.

¹³ *Id.*

¹⁴ Section 1002.394(3)(a)1., F.S.

¹⁵ Section 1002.394(3)(a)2., F.S.

¹⁶ Section 1002.394(3)(b), F.S.

¹⁷ Section 1002.394, F.S.

¹⁸ Section 1002.394(3)(c), F.S.

¹⁹ Section 1002.394(8)(a), F.S.

²⁰ Florida Senate Education Committee, *CS/SB 1220 Bill Analysis* (January 22, 2020), <http://flsenate.gov/Session/Bill/2020/1220/Analyses/2020s01220.ed.PDF>. Includes the school districts for 65 counties, 4 lab school districts, and the Florida School for the Deaf & the Blind.

²¹ Section 1002.395, F.S.

²² Section 1002.395(1) and (5), F.S.

²³ Sections 220.1875 and 1002.395(5), F.S.

for the credit.²⁴ Taxpayers can rescind tax credits, which will become available to another eligible taxpayer in that fiscal year.²⁵

For FY 2017-2018, the maximum amount of tax credits available to be awarded was \$698 million. In any state fiscal year when the annual tax credits granted for the prior state fiscal year are equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, the tax credit cap amount is increased by 25 percent.²⁶ For FY 2017-2018, the actual tax credit contributions applicable against this limit was \$639.2 million which allowed the tax credit cap to increase by 25 percent; consequently the maximum amount of tax credits available for award in FY 2018-19 is \$873.6 million. However, the March 2019 Revenue Estimating Conference has forecasted \$687.8 million in estimated tax credit collections for FY 2018-2019.

A student is eligible for this scholarship program if:

- the student is on the direct certification list (eligible for free or reduced-priced lunch) or the student's household income does not exceed 185% of the federal poverty level;
- the student is currently placed, or during the previous state fiscal year was placed in foster care or in out-of-home care; or
- the student's household income is greater than 185 percent of the federal poverty level but does not exceed 260 percent of the federal poverty level.²⁷

In the 2018-19 school year, 100,512 students enrolled in 1,807 private schools in the FTC program.²⁸

Research on the academic performance of FTC students is conducted annually. The DOE must provide a grant to a state university to annually report on the student performance of participating students. The report must include, to the extent possible, a comparison of scholarship student performance to the statewide student performance of public school students with socioeconomic backgrounds similar to those of the participating program students. The report must also include student performance for each participating private school with a student population that was at least 51 percent comprised of FTC program students in the prior school year. The annual report must be published by the DOE on its website.²⁹

Florida law requires the Auditor General to annually conduct operational audits of the accounts and records of eligible nonprofit SFOs receiving eligible contributions under the FTC Program, including any contracts for services with related entities, to determine compliance.³⁰ Such audits shall include, but not be limited to, a determination of the eligible nonprofit SFO's compliance.³¹ The Auditor General must provide its report on the results of the audits to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Legislative Auditing Committee, within 30 days of completion of the audit.

The Hope Scholarship Program

In 2018, the Legislature created the Hope Scholarship Program (HSP) to provide the parent of a public school student subjected to a specified incident³² at school the opportunity to transfer the child to

²⁴ Section 1002.395(5)(b), F.S.

²⁵ Section 1002.395(5)(e), F.S.

²⁶ Section 1002.395(5)(a), F.S.

²⁷ Section 1002.395(3)(b), F.S.

²⁸ Florida Tax Credit Scholarship Program, *February 2019 Quarterly Report*, available at <http://www.fldoe.org/core/fileparse.php/7558/urlt/FTC-Feb-2019-Q-Report.pdf>.

²⁹ Section 1002.395(9)(f), F.S. (2018).

³⁰ Section 11.45(2)(l), F.S.

³¹ See Section 1002.395(6)(j), F.S.

³² Section 1002.40(3), F.S. A specified incident includes: battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, harassment, assault, or battery; threat or intimidation; or fighting at school.

another public school or to request a scholarship for the child to enroll in and attend an eligible private school.³³ A parent may also choose to enroll their child in a public school located outside the district in which the student resides and request a transportation scholarship.³⁴ The scholarship program is funded by taxpayers who make eligible contributions to SFOs, and in turn, receive a credit against any tax due as a result of the purchase or acquisition of a motor vehicle.³⁵ Contingent upon available funds, scholarships will be awarded on a first-come, first-served basis to eligible students in kindergarten through grade 12 who report an incident to the school principal.³⁶ Unallocated HSP funds may be used to fund the FTC program under certain circumstances.³⁷

The DOE is required to contract with an independent entity to provide an annual evaluation of the HSP by:³⁸

- reviewing the school bullying education program, climate, and code of student conduct of each public school from which 10 or more students transferred to another public or private school using the HSP to determine areas in the school or school district procedures involving reporting, investigating, and communicating a parent's and student's rights that are in need of improvement;
- reviewing the school bullying prevention education program, climate, and code of student conduct of each public school to which a student transferred if the student was from a school identified above in order to identify best practices and make recommendations to a public school at which the incidents occurred;
- reviewing the performance of participating students enrolled in a private school in which at least 51 percent of the total enrolled students in the prior school year participated in the program and in which there are at least 10 participating students who have scores for tests administered; and
- surveying the parents of participating students to determine academic, safety, and school climate satisfaction and to identify any challenges to or obstacles in addressing the incident or relating to the use of the scholarship.

Effect of Proposed Changes

The Gardiner Scholarship Program

The bill authorizes a student with a disability who meets the GSP eligibility requirements, but who turns 3 years of age after September 1, to be determined eligible for a Gardiner scholarship on or after his or her third birthday and awarded a scholarship if funds are available. If funds are not available, the student is placed on the waitlist for the subsequent program year. The bill prohibits eligibility to participate in the GSP if the child is receiving any another educational scholarship, not just a FTC scholarship or John M. McKay scholarship.

The bill requires a Gardiner scholarship account to be closed after 2 fiscal years, rather than 3 fiscal years, in which the account has been inactive. The bill requires the parent to annually renew participation in the GSP in order for their student to be eligible to receive funding. The bill authorizes a student whose participation in the GSP is not renewed to continue spending scholarship funds that are in his or her account from prior years unless the account must be closed.³⁹ The bill requires a student's Gardiner scholarship account to be closed⁴⁰ if a parent does not procure the necessary educational services for the student and the account has been inactive for 2 fiscal years.

The Family Empowerment Scholarship Program

For eligibility to participate in the FES, the bill requires priority be given to:

³³ Section 1002.40(1), F.S.

³⁴ Section 1002.40(6)(a), F.S.

³⁵ Section 1002.420(2)(d) and (13), F.S.

³⁶ Section 1002.420(3) and (6), F.S.

³⁷ See s. 1002.40(13), F.S.

³⁸ Section 1002.40(8)(d)1.-4., F.S.

³⁹ See Section 1002.385(6)(b), F.S.

⁴⁰ *Id.*

- eligible students who received a FES during the previous school year;
- new applicants whose household income levels do not exceed 185 percent of the federal poverty level;
- new applicants who are in foster care or out-of-home care; and
- new applicants who are a dependent child of a member of the U.S. Armed Forces.

The bill requires the maximum household income level be increased by 25 percentage points in the fiscal year following any fiscal year in which more than 5 percent of the number of available scholarships have not been awarded. The bill also requires an eligible nonprofit SFO to verify the household income level of students and submit to DOE the verified list of students and related documentation to enable the DOE to determine student eligibility.⁴¹ The DOE must notify the school district of the parent's intent to participate the FES upon receipt of the verified list, instead of upon the parent's request. The bill revises the requirement that each school district inform all households within the district receiving free or reduced-priced meals under the National School Lunch Act of their eligibility to apply to an eligible nonprofit SFO, rather than DOE, for a scholarship by February 1 of each year. The parent must submit a request to an eligible nonprofit SFO at least 60 days before the first scholarship payment.

The bill expands eligibility by eliminating the requirement to spend the prior year enrolled in a public school for students in first or second grade. Also, students who received a FTC scholarship during the previous school year and, before initial receipt of the scholarship, spent the prior year attending a Florida public school are eligible to apply.

The bill also aligns the FES with the FTC Program requirements by:

- allowing a student to participate in no more than two virtual school, correspondence school, or distance learning program courses per school year;
- requiring DOE to maintain a list of nationally norm-referenced tests, which must meet industry standards of quality,⁴² identified for purposes of satisfying the testing requirement;⁴³ and
- requiring a private school participating in the FES to report the scores of all participating students to a state university⁴⁴ by August 15 of each year.

The bill requires the maximum number of students participating in the FES to annually increase by 1.0 percent, rather than 0.25 percent, of the state's total public school student enrollment.

The Florida Tax Credit Scholarship Program

For the purposes of continuity of educational choice, the bill provides that a student who receives a FTC scholarship remains eligible to participate until the student enrolls in a public school, graduates from high school or reaches 21 years of age. The bill aligns the FTC Program with the FES and the John M. McKay Scholarship Program by clarifying that a student who returns from a Department of Juvenile Justice detention center and has not spent more than 21 days there is not considered to have returned to public school.

⁴¹ See Section 1002.394(7)(b), F.S. The DOE is required to cross-check the list of participating FES students with the public school enrollment lists before each scholarship payment to avoid duplication.

⁴² See Rule 6A-6.0960(b)1.-7., F.A.C.

⁴³ See Section 1002.394(8)(c)1., F.S. To be eligible to participate in the FES, a private school must annually administer or make provision for students participating in the program in grades 3 through 10 to take one of the nationally norm-referenced tests identified by DOE or to take the statewide assessments pursuant to s. 1008.22, F.S. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. A participating private school must report a student's scores to his or her parent.

⁴⁴ See Section 1002.395(f), F.S. The DOE must issue a project grant award to a state university, to which private schools must report scores of participating students on the nationally norm-referenced tests or the statewide assessments administered by the private school in grades 3 through 10.

The bill authorizes eligible nonprofit SFOs to use the income earned on eligible contributions⁴⁵ for administrative expenses if the SFO has operated as an eligible nonprofit SFO for at least the preceding 3 fiscal years and did not have any findings of material weakness or material noncompliance in its most recent audit. The bill requires the Auditor General to conduct operational audits at least every 3 years of the accounts of eligible non-profit SFOs receiving eligible contributions⁴⁶ under the FTC Program.⁴⁷

The Hope Scholarship Program

As part of the annual review of the HSP by an independent entity, the bill requires reviewing the school bullying prevention education program, climate, and code of student conduct of each public school from which ten or more students transferred to another public or private school using the Hope Scholarship in a single academic year to determine areas in the school or school district procedures involving reporting, investigating, and communicating a parent's and student's rights that are in need of improvement.

B. SECTION DIRECTORY:

Section 1. Amends s. 11.45, F.S., revising the frequency in which the Auditor General conduct certain operational audits.

Section 2. Amends s. 1002.385, F.S., authorizing certain students who turn 3 years of age after a certain date to receive a Gardiner scholarship under certain circumstances; revising the conditions necessary for program funds to revert to the state; authorizing certain students to continue using scholarship funds from prior years; requiring certain students' accounts to be closed if his or her parent fails to procure specified services; providing that certain students are ineligible for a scholarship; and deleting a provision allowing certain students to become eligible for a scholarship.

Section 3. Amends s. 1002.394, F.S.; revising student eligibility criteria for initial and renewal awards under the FES; revising student priority criteria for a FES; requiring requests for such scholarship to be provided directly to an eligible nonprofit SFO; requiring the State Board of Education to review specified data relating to enrollment in such program and the FTC Program; revising certain eligibility criteria for such programs under certain circumstances; deleting a notification requirement; revising student ineligibility criteria and school district obligations for such scholarship; requiring DOE to maintain a specified list and notify such organizations of a specified deadline; requiring participating private schools to annually report certain scores to a state university; revising such organization's obligations; and requiring, rather than authorizing, an annual specified increase in the maximum number of students participating in such program.

Section 4. Amends s. 1002.395, F.S., requiring that certain students be given priority for the FTC Program; revising the eligibility requirements for a scholarship award to remain in force; and authorizing eligible nonprofit SFOs to use certain income for specified purposes.

Section 5. Amends s. 1002.40, F.S., revising the criteria for a public school to have a specified entity evaluate its bullying prevention education program, climate, and code of student conduct under the HSP.

Section 6. Provides an effective date of July 1, 2020.

⁴⁵ See Sections 212.099, 212.1832, and 1002.40, F.S. "Eligible contribution" or "contribution" means a monetary contribution from an eligible business to an eligible nonprofit scholarship-funding organization to be used pursuant to the FTC Program. The eligible business making the contribution may not designate a specific student as the beneficiary of the contribution.

⁴⁶ See Section 1002.395, F.S.

⁴⁷ Florida Auditor General, *Annual Report* (2019), available at https://flauditor.gov/pages/pdf_files/annual%20report%202019.pdf. The Legislature should consider amending Sections 11.45(2)(l), 1002.385(14)(a), and 1002.40(12), F.S., to require the Auditor General to conduct operational audits at least once every 3 years of the accounts and records of eligible nonprofit SFOs.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.